

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CARLO R. NUNEZ,

Plaintiff,

vs.

UNUM LIFE INSURANCE COMPANY
OF AMERICA,

Defendant.

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No. 1:17-CV-00933

**COMPLAINT UNDER ERISA FOR RECOVERY OF
DISABILITY INSURANCE BENEFITS**

COMES NOW, Jeffrey B. Diamond, attorney for Carlo R. Nunez, and for claims against Defendant, respectfully states the following:

1. At all times material hereto, the Plaintiff was a resident of Albuquerque, New Mexico and an Employee of Sandia National Laboratories who was insured by the Defendant under a long term disability plan, policy number 28157011.

2. Defendant is a foreign corporation which engages in the insurance business in the State of New Mexico. This action is brought pursuant to 29 USC Section 1132, and Section 502 (a) of the Employee Retirement Income Security Act of 1974. Jurisdiction and venue are proper in this Court pursuant to Subsection (e)(1) of 29 USC Section 1132. This complaint is timely filed.

3. Plaintiff filed a claim 10794623 under said policy number 28157 on or about March 30, 2015, by reason of being unable to work at his usual employment or any other job for which he was fit by reason of his age, education and experience due to a combination of physical and mental impairments as of October 28, 2014.

4. Plaintiff has numerous severe medical impairments including, but not limited to, Chronic Headaches; Chronic Low Back Pain; Depressive Disorder; Fibromyalgia; Chronic Pain Syndrome; and Sleep Apnea. These impairments prevent him from engaging in any substantial gainful activity, including a full range of sedentary work.

5. On July 14, 2017, the Plaintiff was awarded Social Security Disability Insurance Benefits by Administrative Law Judge Michael Leppala on claims for benefits filed protectively on February 2, 2015, following a hearing held on May 22, 2017.

6. Plaintiff is an Honorably Discharged Veteran who was awarded a 40% service connected disability pension for fibromyalgia on March 28, 2017.

7. On December 10, 2015, Defendant denied the claim on the pretext it did not receive a requested report from Dr. Baum who was a testing and treating psychologist of the Plaintiff.

8. Plaintiff filed a timely appeal of the LTD denial on June 7, 2016, and received a denial of this appeal by letter dated August 11, 2016. Plaintiff provided medical release authorizations, and medical records, statements of his impairments and medical treatments, and other information necessary to make a full, fair and proper determination of his claim.

9. The Plaintiff is entitled to all benefits payable under the Long Term Disability policy of the Defendant and the denial of the benefit claim dated August 11, 2016 as the final decision of the Defendant was unreasonable, arbitrary, and capricious and breached the Defendant's contract and fiduciary obligation to fairly and impartially evaluate the claim of the Plaintiff.

10. That as a direct result of the wrongful, unlawful and improper review of Plaintiff's claim, and the refusal of the Defendant to pay the Plaintiff disability benefits pursuant to the subject plan, the Defendant breached its fiduciary duties to Plaintiff. Plaintiff has suffered financial loss and hardship, deprivation of contractual benefits under the disability plan, and the Court should award Plaintiff a judgment against the Defendant for all disability benefits to which he is entitled under the plan, together with interest thereon, reasonable attorney fees, costs of suit and such other and further relief as the Court deems just and proper.

WHEREFORE, Plaintiff requests the Court award him damages against the Defendant for all disability income and life insurance benefits due Plaintiff since October 28, 2014 together with accrued pre-judgment interest thereon, costs, reasonable attorney fees, and such other and further relief as the Court deems just in the premises.

Respectfully submitted,

JEFF DIAMOND LAW FIRM

/s/ Jeffrey B. Diamond (9/11/17)

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